

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 13, 2009

STATE OF TENNESSEE v. DAVID OFFUTT

**Direct Appeal from the Circuit Court for Rutherford County
No. F-54887 Robert E. Corlew, III, Judge**

No. M2008-00697-CCA-R3-CD - Filed April 30, 2009

The Defendant was indicted on six counts of rape of a child, ten counts of aggravated sexual battery, one count of rape, and one count of sexual battery by an authority figure. He pled guilty to three counts of incest, and the trial court sentenced him to an effective sentence of eighteen years. The Defendant filed a motion to set aside his guilty plea, which the trial court denied. The Defendant filed an amended motion, and the trial court again denied him relief. The Defendant now appeals, claiming that the trial court erred. After a thorough review of the record and the applicable law, we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES, and JERRY L. SMITH, JJ., joined.

Brion J. Payne, Murfreesboro, Tennessee, for the Appellant, David Offutt.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Rachel West Harmon, Assistant Attorney General; William Whitesell, District Attorney General; Laural Hemingway, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Facts

The record on appeal does not include the facts underlying this case. At the guilty plea hearing, the Defendant stipulated that the victim's prior testimony formed the factual basis for his plea, and the record does not include the victim's prior testimony. Additionally, neither party presented any additional facts at the guilty plea hearing.

On March 20, 2007, the Defendant pled guilty to three counts of incest, and the trial court sentenced him to six years on each count with the sentences to be served consecutively. The Defendant filed a motion on April 10, 2007, to withdraw his guilty plea. The trial court held a hearing, and it orally denied the motion. The Defendant then filed an amended motion to withdraw

his guilty plea. The trial court held a second hearing, and it denied the motion by a written order.

The Defendant testified at the hearing on his amended motion to set aside his guilty plea. The Defendant discussed his health around the time of the plea. The Defendant testified that in the two weeks prior to the guilty plea hearing, while he was in jail, he suffered from dizzy spells, anxiety, and sleep apnea,¹ which he believed were caused by the delay of his trial. He believed that, if his trial had not been delayed, then his health issues would not have caused him to plead guilty. The nurses treated the Defendant with ten-day prescriptions for ibuprofen, amoxicillin (an antibiotic), and Mucinex (a decongestant). The Defendant said that the nurses attributed his dizziness to a bacterial infection. The Defendant refused to take any anti-anxiety medicine because he did not want to “do a psychiatry.” Moreover, he stated that, instead of taking medication, he preferred to “hope and . . . pray[]” for healing. The Defendant said that on the day of the guilty plea hearing, he felt “upset” and “weak,” but he did not feel dizzy.

The Defendant also said that his ex-wife wrote him that, if he did not plead guilty, the State would take their son from her and place him in a foster home. The Defendant said the thought of his son living in foster care caused him great anxiety to the point that he could not “rationally weigh[] the benefits of having a trial against the benefits of taking a plea.” He did, however, acknowledge that the one hundred seventy-five year sentence he faced if a jury convicted him “was weighing on [him].” Notwithstanding that potential sentence, the Defendant stated that he wanted a trial in order to be “exonerated from all those false and fictitious charges.”

The Defendant talked at length about his Davidson County trial on similar charges. He expressed dissatisfaction with his representation at that trial. He was also angry that his trials in Rutherford and Davidson Counties had taken several years to develop, and he accused various attorneys and at least one judge of “conspiring” to delay his trial. The Defendant additionally testified that he wrote his attorney for the Rutherford County trial a letter the day after he pled guilty asking him to file a motion to withdraw his plea.

After considering the evidence presented, the trial court denied the Defendant relief. It is from this judgment that the Defendant now appeals.

II. Analysis

On appeal, the Defendant claims that the trial court erred by denying his motion to withdraw his guilty plea. The Defendant argues that he should have been permitted to set aside his guilty verdict because: (1) he was in a weakened physical and mental state; (2) he was worried about his son; and (3) he was anxious from the delay of trial. The State argues that the Defendant had logical reasons to plead guilty and that his regret is not enough to meet the burden of proving a manifest injustice will occur if his plea is not set aside.

¹Sleep apnea is a disorder where a person briefly stops breathing while sleeping.

In Tennessee, if a defendant has pled guilty, a trial court may allow the withdrawal of that plea under certain circumstances. If it has not yet imposed a sentence, then the trial court may grant a motion to withdraw the plea for “any fair and just reason.” Tenn. R. Crim. P. 32(f)(1). If the trial court has sentenced the defendant, it may grant a motion to withdraw the plea before the judgment becomes final, which is thirty days after the sentence is imposed, and only “to correct a manifest injustice.” Tenn. R. Crim. P. 32(f)(2). The decision to grant such a motion is within the trial court’s discretion, and this Court will only reverse the trial court’s ruling if there is a clear abuse of discretion. *State v. Drake*, 720 S.W.2d 798, 799 (Tenn. Crim. App. 1986).

The keystone term “manifest injustice” is not statutorily defined, and the trial and appellate courts must decide whether it exists on a case-by-case basis. *State v. Turner*, 919 S.W.2d 346, 355 (Tenn. Crim. App. 1986). This Court has held that circumstances leading to a “manifest injustice” include if the defendant pled guilty due to “(a) ‘coercion, fraud, duress, or mistake,’ (b) ‘fear,’ (c) a ‘gross misrepresentation’ . . . by the district attorney general, or an assistant, (d) the district attorney general, or an assistant, withhold[ing] material, exculpatory evidence, which influences the entry of the plea, or [(e)] the plea of guilty was not voluntarily, understandingly, or knowingly entered.” *Id.* (citations omitted). On the other hand, a trial court generally will not grant the withdrawal of a guilty plea to prevent manifest injustice on the basis of “(a) an accused’s change of heart, (b) the entry of the plea to avoid harsher punishment, or (c) an accused’s dissatisfaction with the harsh punishment imposed by a trial court or a jury.” *Id.* (citations omitted).

The trial court in this case denied the Defendant relief. Addressing the Defendant’s claim that the delay of trial induced anxiety, which caused him to irrationally plead guilty, the trial court said that it “appreciate[d] the fact that this case did not come to court as promptly as some others.” It then stated, “Of course, we recognize also that the matter was set before us extremely promptly after the case was assigned to us, and that the jury was sworn and the jury proceeding commenced.” The Court then addressed the Defendant’s anxiety over his son, and it said, “[T]he Court did ask [the Defendant] . . . whether there were any other threats or any promises that were made. And the Court understands and appreciates his answer on that day and appreciates his argument today perhaps to the contrary.” The court denied the motion, however, stating, “[G]iven all of those circumstances, in fairness it’s our duty respectfully to deny the motion.” The trial court then issued a corresponding written order.

The Defendant filed a timely motion to set aside his guilty plea. Since he filed this motion after he was sentenced and before the judgment became final, the trial court could only grant relief to correct a manifest injustice. *See* Tenn. R. Crim. P. 32(f)(2).

The Defendant failed to prove that the trial court abused its discretion when it denied him relief. In our view, the Defendant’s cold and sleep apnea are not convincing reasons that, if his guilty plea stands, it will be a manifest injustice. The Defendant was prescribed ibuprofen, amoxicillin, and Mucinex, two of which are over-the-counter medicines. He testified that he stopped taking the medicine several days before his guilty plea was entered. He stated that he felt “upset”

and “weak” but not dizzy when he pled guilty. The Defendant’s feeling “upset” from pleading guilty to three sexually-based offenses is understandable, but it is not a cognizable ground for relief.

Next, the Defendant claims that he pled guilty because he feared the State would take his son from his ex-wife. He said his ex-wife wrote him about that consequence in a letter, but he did not produce the letter or her testimony about writing such a letter at the hearing. Further, he did not call his ex-wife as a witness. The evidence presented by the Defendant is not sufficient to establish a manifest in justice.

As for the Defendant’s heightened anxiety due to the delay of his Rutherford County trial, the Defendant was indicted in December 2003, and his trial was scheduled for March 2007. As the trial court pointed out, it set the case for trial as soon as it received the case, and the trial quickly followed. Moreover, the Rutherford County court was trying to work in tandem with the Davidson County court, given the Defendant’s similar charges in both jurisdictions. The Defendant has failed to show the delay of his trial date entitles him to relief.

Finally, we note that the Defendant accepted a plea offer that reduced his charge from eighteen counts to three counts and reduced his potential sentence from one hundred seventy-five years to eighteen years. The Defendant testified that he felt the potential sentence of one hundred and seventy-five years “weighing on [him].” This supports the State’s contention that the Defendant rationally chose to plead guilty and that his motion to withdraw his plea stems from either a change of heart or dissatisfaction with the harsh punishment imposed by the trial court. Those are not grounds for relief. *See Turner*, 919 S.W.2d at 355.

In sum, the Defendant has failed to prove that the trial court abused its discretion when it denied his motion to withdraw his guilty plea. As such, he is not entitled to relief on this issue.

III. Conclusion

After a thorough review of the record and the applicable law, we conclude that the trial court did not abuse its discretion when it denied the Defendant’s motion to withdraw his guilty plea. As such, we affirm the trial court’s judgment.

ROBERT W. WEDEMEYER, JUDGE